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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,983	08/21/2003	Clifford Hannel	I004-P03079US	1148
33356 7590 10/26/2010 SoCAL IP LAW GROUP LLP 310 N. WESTLAKE BLVD. STE 120 WESTLAKE VILLAGE, CA 91362				
EXAMINER				
BENOIT, ESTHER				
ART UNIT		PAPER NUMBER		
2453				
NOTIFICATION DATE		DELIVERY MODE		
10/26/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@socalip.com

Office Action Summary

Application No.

10/646,983

Applicant(s)

HANNEL ET AL.

Examiner

ESTHER BENOIT

Art Unit

2453

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Action is in response to an Amendment filed on August 25, 2010. Claims 1, 15, 21, 27 and 35 have been amended. Claims 1-45 are pending in this application.

Response to Arguments

2. Applicant's arguments with respect to claims 1-45 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 21-34 are rejected under 35 U.S.C. 112, second paragraph. Claims 21 and 27 are being indefinite because the means for performing the claimed functions lack corresponding structures. The specification also does not disclose any particular structure(s) by which the means plus function claims can be implemented. Therefore, the claims are indefinite. See MPEP § 2181. Claims 22-26 and 28-34 are rejected because they do not provide any additional support for the structures of the "means for" limitations of claims 21 and 27 and thus, are also indefinite.
5. Claims 15 and 21 recite the limitation "the conditions". There is insufficient antecedent basis for this limitation in these claims.
6. Claim 35 recites the limitation "the second means" and "the first means". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerrevink et al. (US 2003/0012141 A1), in view of Beanland (6,028,847).

With respect to claim 1, Gerrevink discloses:

- coupling a device to the communications network, the device comprising a chassis and one or more adapter cards, the adapter cards comprising hardware and software ([0031] and [0035], *traffic stream generator*)
- the device setting up for simulation of a realistic mix of network traffic on the communications network ([0031] and [0035], *simulating a traffic mix*)
- the device simulating the realistic mix of network traffic on the communications network ([0031] and [0035], *simulating a traffic mix*)
- the device setting up for engaging in transactions with the system under test ([0037] and [0067], *traffic stream generator for simulating realistic network traffic*)

- the device engaging in transactions with the system under test concurrently with the step of simulating the realistic mix of network traffic on the communications network ([0037] and [0067], *simulating realistic network traffic*)
- the device measuring performance of the system under test under load of the transactions, and the network traffic on the communications network including the simulated network traffic from the device ([0037], [0067], and [0075], *making real-time measurements*)

Gerrevink does not explicitly disclose each transaction includes receiving at least one packet from the system under test and sending at least one response packet in response to the received packet, resulting in additional network traffic on the communications network.

However, Beanland discloses each transaction includes receiving at least one packet from the system under test and sending at least one response packet in response to the received packet, resulting in additional network traffic on the communications network (Col. 7, lines 56-67, *a handshaking protocol is used to establish a connection between the emulator and the equipment under test. The handshake protocol is well known in the art at the time of the invention to be used for transmission of a negotiation packet between devices which includes the connection parameters.*

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to combine the teachings of Gerrevink with the teachings of Beanland to include a request-response relationship between the testing device and the system under test in addition to the simulation testing, *because* it will allow for connection integrity between the devices.

With respect to independent claims 15, 21, and 27, the limitations of these claims are similar to the limitations of claim 1. Therefore, claims 15, 21, and 27 are rejected for the same reasons as claim 1 above. Please see rejection above.

With respect to claim 35, Gerrevink discloses simulating real-world network traffic on the communications network generating interactive transactions across the communications network with the system under test measuring performance of the system under test in supporting the interactive transactions from the second means despite the simulated traffic on the communication network from the first means changing quantity and quality of the network traffic simulated by the first means wherein the steps of simulating, generating and measuring are performed concurrently ([0037], [0067], and [0075], *simulating realistic network traffic and generating different traffic classes to make real-time measurements*)

Gerrevink does not explicitly disclose each interactive transaction includes receiving at least one packet from the system under test and sending at least one response packet in response to the received packet.

However, Beanland discloses each interactive transaction includes receiving at least one packet from the system under test and sending at least one response packet in response to the received packet (Col. 7, lines 56-67, *a handshaking protocol is used to establish a connection between the emulator and the equipment under test. The handshake protocol is well known in the art at the time of the invention to be used for transmission of a negotiation packet between devices which includes the connection parameters.*

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to combine the teachings of Gerrevink with the teachings of Beanland to include a request-response relationship between the testing device and the system under test, *because* it will allow for connection integrity between the devices.

With respect to claim 2, Gerrevink discloses the system under test comprises an application, the application operative on a server, the application for providing user-level interaction with plural client computers on the communications network the providing step comprises providing the server and the application operative thereon ([0031] and [0035])

With respect to claim 3, Gerrevink discloses the system under test comprises a server load balancer ([0077])

With respect to claim 4, Gerrevink discloses the system under test comprises a stateful network communications device (Figure 1)

With respect to claim 5, Gerrevink discloses the performance of the system under test is characterized by how the server supports the simulated network traffic ([0031] and [0035])

With respect to claims 6 and 28, Gerrevink discloses the simulated network traffic is generated by a stateless packet processor (Figure 1)

With respect to claims 7, 29, and 38, Gerrevink discloses the system under test comprises a stateful application which uses underlying services of TCP ([0031])

With respect to claims 8, 30, and 39, Gerrevink discloses the system under test comprises an HTTP server ([0078])

With respect to claims 9, 31, and 40, Gerrevink discloses the system under test comprises an FTP server ([0078])

With respect to claims 10, 23, and 41, Gerrevink discloses modifying a behavior of the network traffic simulated by the device continuing to engage in transactions with the system under test continuing to measure performance of the system under test ([0037], [0067], and [0075])

With respect to claim 17, Gerrevink discloses hardware and software for modifying a behavior of the simulated network traffic (Figure 3, **350**)

With respect to claims 11, 18, 24, 32, and 42, Gerrevink discloses using performance metrics to modify the behavior of the simulated network traffic to more closely simulate a realistic mix of network traffic ([0031])

With respect to claims 12, 19, 25, 33, and 43, Gerrevink discloses the performance metrics are selected from the group consisting of retransmission rate, fragmentation, packet sizes, and drop/reset rates ([0018])

With respect to claims 13, 34, and 44, Gerrevink discloses a user using a control program to change the behavior of the simulated network traffic via a system interface ([0031], [0067], and [0075])

With respect to claims 14 and 45, Gerrevink discloses the user managing multiple ports in a coordinated fashion ([0031], [0067], and [0075])

With respect to claims 16 and 22, Gerrevink discloses the adapter cards include a stateless packet processor for simulating the realistic mix of network traffic on the communications network (Figure 1)

With respect to claims 20 and 26, Gerrevink discloses hardware and software for changing a behavior of the simulated network traffic in response to user instructions (Figure 3, **350**)

With respect to claim 36, Gerrevink discloses the performance of the system under test is characterized by how the simulated network traffic is supported ([0031])

With respect to claim 37, Gerrevink discloses the simulated network traffic is generated by a stateless packet processor (Figure 1)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther Benoit whose telephone number is 571-270-3807. The examiner can normally be reached on Monday through Friday between 7:30 a.m and 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Krista M. Zele can be reached on 571-272-7288. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

E.B.
October 14, 2010

/Philip C Lee/
Primary Examiner, Art Unit 2453

